United Nations A/AC.109/2013/15

General Assembly

Distr.: General
15 March 2013

Original: English

**Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples**

# Gibraltar

**Working paper prepared by the Secretariat**

## Contents


| | | Page |
|---|---|---|
| I. | General | 3 |
| II. | Constitutional, legal and political issues | 3 |
| III. | Budget | 4 |
| IV. | Economic conditions | 4 |
| | A. General | 4 |
| | B. Trade | 5 |
| | C. Banking and financial services | 5 |
| | D. Transportation, communications and utilities | 5 |
| | E. Tourism | 6 |
| V. | Social conditions | 6 |
| | A. Labour | 6 |
| | B. Social security and welfare | 6 |
| | C. Public health | 6 |


*Note*: The information contained in the present working paper has been derived from information transmitted to the Secretary-General by the administering Power under Article 73 *e* of the Charter as well as information provided by the Government of Spain and that available in public sources, including those of the territorial Government. Information was transmitted by the administering Power on 21 December 2012. Further details are contained in previous working papers posted on the United Nations website http://www.un.org/en/decolonization/workingpapers.shtml.

13-26037 (E) 250313

Please recycle

D. Education ..... 6
E. Crime and public safety ..... 7
F. Human rights ..... 7
VI. Forum for Dialogue on Gibraltar ..... 7
VII. Future status of the Territory ..... 8
A. Position of the administering Power ..... 8
B. Position of the territorial Government ..... 9
C. Position of the Government of Spain ..... 9
D. Negotiations between the United Kingdom and Spain ..... 10
E. Discussions between the United Kingdom and Gibraltar ..... 10
VIII. Consideration by the United Nations ..... 10
A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples ..... 10
B. Special Political and Decolonization Committee (Fourth Committee) ..... 11
C. Action by the General Assembly ..... 11

# I. General

1. Gibraltar is a Non-Self-Governing Territory administered by the United Kingdom of Great Britain and Northern Ireland. The Territory is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus approximately 1.6 kilometres long. The Spanish port of Algeciras lies 8 kilometres across the bay to the west, and the continent of Africa is situated 32 kilometres across the Strait of Gibraltar to the south. According to the administering Power, the area of Gibraltar is 5.8 square kilometres; according to Spain, which claims sovereignty over the Territory, it is 4.8 square kilometres. Issues relating to the water off Gibraltar continue to be a subject of contention.

2. According to the administering Power, in 2011 the population in the Territory was 29,752. The currency of the Territory is the Gibraltar pound, circulating at par with the pound sterling. The Territory's main trading and commercial transactions are with European countries, the United States of America and North African countries.

3. The basis of the current relationship between the Government of the United Kingdom and its Non-Self-Governing Territories is enshrined in the constitution of each Territory. According to the administering Power, the British Overseas Territories Act 2002 provides for the grant of the right to British citizenship to "British Overseas Territory citizens".

# II. Constitutional, legal and political issues

4. Under the Constitution Order 2006, the Governor of Gibraltar, Vice-Admiral Sir Adrian James Johns, has represented the British Crown in the Territory since October 2009. The Governor is responsible for the conduct of external affairs, defence, internal security (including the police, in conjunction with the Police Authority for Gibraltar) and for certain appointments to public office as conferred on him by the Constitution. Following an election, the Governor, at his own discretion, appoints as Chief Minister the elected member of the Parliament who, in his judgement, is most likely to command the greatest measure of confidence of his peers. Other ministers are appointed by the Governor, acting in accordance with the advice of the Chief Minister, from among the elected members of the Parliament.

5. According to the 2006 Constitution, the Governor, acting in accordance with the advice of the Chief Minister, must dissolve the unicameral 17-member Parliament in preparation for a general election. In any case, the Governor must dissolve the Parliament four years from the date of its first meeting after a general election unless Parliament has already been dissolved. Under the Gibraltar Constitution, the British Crown retains full power to make laws from time to time for the peace, order and good government of Gibraltar. Included in those powers are laws amending or revoking the Constitution.

6. According to territorial Government figures, the Gibraltar Socialist Labour Party/Gibraltar Liberal Party alliance headed by Fabian Picardo won the general elections held on 8 December 2011 with approximately 49 per cent of the votes, against 47 per cent for the Gibraltar Social Democrats. The next election is expected to take place in 2015.

7. Gibraltar has a Supreme Court allowing for appeals to a Court of Appeal and subsequently to Her Majesty in Council, acting on the advice of the Privy Council. The 2006 Constitution provides for the establishment of a Judicial Service Commission, which was set up under the Judicial Service Act of 2007 (Act No. 2007-26). The Commission has executive powers, subject only to an exceptional power of veto by the Governor, to advise the Governor in respect of certain matters, such as appointments to the offices of the Chief Justice and other members of the judiciary. The Governor, with the prior approval of a Secretary of State, may disregard the advice of the Commission in any case where he judges that compliance with that advice would prejudice the British Crown's service. The Constitution also makes provisions regarding Crown lands in Gibraltar.

8. In June 2004, after a 10-year campaign to exercise the right to vote in European elections, Gibraltarians took part in European parliamentary elections, based on the fact that they were considered by the administering Power, for electoral purposes, to be part of the south-west England region.

9. The Government of Spain maintains the position that the 2006 Constitution does not affect the international capacity of Gibraltar; that its adoption was a reform of the colonial regime, which remains unaltered; and that it did not affect in any way the pending decolonization process of Gibraltar, to which the principle of self-determination does not apply.

## III. Budget

10. According to information provided by the administering Power, as of March 2012 the revenue of the territorial Government was £452 million and its expenditures stood at £333 million. The territorial Government approved £35.9 million in expenditures on capital projects for 2012/2013, to be funded through the Improvement and Development Fund. The highest possible rate of effective personal tax in Gibraltar was 24.9 per cent, with the company tax rate at 10 per cent.

11. According to media reports, information provided by the Gibraltar Financial Centre indicated that by early 2013 the Territory had signed 26 tax information exchange agreements.

## IV. Economic conditions

### A. General

12. Gibraltar has no known natural resources and lacks agricultural land. With the downsizing of the military base since the 1980s, the economy has increasingly focused on tourism and the provision of financial services, including banking, insurance, shipping and portfolio management, as well as online gaming.

13. Prior to 1980, the economy was largely dependent on expenditures made by the Ministry of Defence of the United Kingdom. The Gibraltar operating base includes military and civilian personnel. After the territorial Government expressed concern that the Ministry of Defence had to reduce the amount of work that it outsourced to local construction companies, an agreement was reached between the territorial Government and the Ministry of Defence that the base could not reduce

its workforce below an agreed level except by voluntary redundancies. In 2011, the Ministry of Defence appointed a Special Representative to Gibraltar to work on a range of issues connected with the continued presence of the base.

14. According to information provided by the administering Power, in 2010/2011, Gibraltar's gross domestic product (GDP) grew to £1,050.54 million, with an estimated GDP per capita of £35,589.

## B. Trade

15. According to the administering Power, in 2011, the Territory's total imports amounted to approximately £2.3 billion. Around 27 per cent of non-fuel imports originate from the United Kingdom. Other sources of non-fuel imports include Germany, the Netherlands and Spain. The Territory's total exports for 2011 were approximately £1.9 billion. Exports were mainly re-exports of petroleum and petroleum products supplied to shipping.

## C. Banking and financial services

16. Gibraltar has a well-developed financial sector, which, as previously reported, is regulated by the Financial Services Commission. The Gibraltar Finance Centre is charged with the marketing and promotion of financial services. Twelve banks operate in Gibraltar.

## D. Transportation, communications and utilities

17. Enhancements to road transportation arrangements in and out of Gibraltar were agreed upon at talks held in Córdoba, Spain, in 2006. They included the introduction at the fence/frontier of lanes in both directions, and red and green channels for both people and vehicles. Customs and police checks remain necessary, since Gibraltar does not belong to the European Union Customs Union. Moreover, the United Kingdom (and thus Gibraltar) does not belong to the Schengen area for external borders control purposes.

18. The United Kingdom continues to be responsible for all international obligations relating to aviation safety and security in respect of Gibraltar Airport, a military airfield available for civilian flights, with the Ministry of Defence retaining ownership of and operational responsibility for the military aviation aspects of the airfield. According to the administering Power, legislation enacted by the Gibraltar Parliament provides for civil aviation safety and security. In July 2010, the British (National Air Traffic Services) and Spanish (Aeropuertos Españoles y Navegación Aérea) air control service providers reached agreement on technical procedures helping to provide safe passage for aircraft using Gibraltar Airport. Spain holds the position that the occupation by the United Kingdom of the isthmus on which the airfield was built is illegal and that it does not comply with public international law as it is not included among the areas ceded by the Treaty of Utrecht. For its part, the United Kingdom is confident its sovereignty over the whole of the territory of Gibraltar based on the Treaty of Utrecht and continuous possession over a long period of time.

19. The Strait of Gibraltar is a principal water route; the Territory's port facilities are used by many long-distance liners and cargo ships. According to the United Kingdom, it applies a 3-mile area for British Gibraltar Territorial Waters (or less where the median line with other territorial waters applies), in line with the United Nations Convention on the Law of the Sea. According to Spain, it exerts its sovereign rights and jurisdiction over its territorial waters, including all maritime areas around Gibraltar (with the only exception being its port facilities).

### E. Tourism

20. According to the United Kingdom, in 2011 the tourism sector recorded an increase to approximately 11.9 million visitors. Arrivals by land comprise mainly day visitors arriving from Spain; arrivals by air are primarily tourists from the United Kingdom; arrivals by sea include visitors arriving by ferry from Morocco and on day trips from cruise ships.

## V. Social conditions

### A. Labour

21. According to the administering Power, as at October 2011 there were 22,247 jobs in the Territory, including, from the largest industrial sectors, some 3,400 jobs in building and construction, 3,100 in banking and finance, 2,700 in gambling and betting and 2,300 in the retail trade. The unemployment rate stood at 4.9 per cent of the work force.

### B. Social security and welfare

22. The social security and welfare sectors in Gibraltar continue to be governed by various social security acts, as mentioned in previous working papers, covering areas such as employment injuries insurance, maternity grants and allowances and unemployment benefits.

### C. Public health

23. The Gibraltar Health Authority, a department of the territorial Government, is responsible for providing health care in the Territory, which, as at 2011, had an infant mortality rate of nil. According to the territorial Government, it decided to create new initiatives, in particular to deal with the needs of the elderly citizens, increasing the number of care agency beds available and working to ensure the opening of two day care centres for elderly persons in 2013.

### D. Education

24. Education in Gibraltar is free and compulsory for children between the ages of 4 and 15. The language of instruction is English. Public education comprises 11 primary and two secondary schools, as well as the Gibraltar College of Further

Education and the Vocational Training Centre, serving over 5,000 students. The Territory's literacy rate is assumed to be nearly 100 per cent.

25. Government expenditure on education during the year ending in March 2012 was approximately £30 million, and expenditure on improving school buildings was in the region of almost £1.5 million. Students who obtain a place at a university in the United Kingdom are entitled to Gibraltar Government scholarships. According to the territorial government, during 2011/2012, 764 students attended universities in the United Kingdom.

### E. Crime and public safety

26. Law enforcement in the Territory is the responsibility of the Royal Gibraltar Police, in conjunction with the Gibraltar Police Authority. The Governor has overall, ultimate responsibility for the integrity, probity and independence of policing in Gibraltar and for the policing aspects of national security, including internal security.

27. The 2011/2012 annual report of the Gibraltar Police Authority indicates that the figures for overall recorded crime dropped by 13.5 per cent for the period under review to 4,546. An overall 4 per cent drop in serious crime such as serious fraud and deception, firearms offences, criminal damage and general drug offences was also reported.

28. The annual policing plan for 2012/2013 refocused on modernized policing, with a greater emphasis on neighbourhood and high-visibility policing and the prevention of crime through education and other means.

### F. Human rights

29. The following major international human rights instruments apply in Gibraltar: the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Constitution of the Territory includes a chapter on the fundamental rights and freedoms of the individual.

30. According to the "Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report" issued in 2012, the protection and promotion of human rights in each territory is primarily the responsibility of the territorial government while the Government of the United Kingdom is ultimately responsible for ensuring that territories fulfil their obligations arising from international human rights treaties that have been extended to them.

## VI. Forum for Dialogue on Gibraltar

31. Negotiations between the United Kingdom and Spain on the subject of Gibraltar led in 2004 to the establishment of the Forum for Dialogue on Gibraltar. In 2006 the first ministerial meeting of the Forum agreed on a package of issues,

known as the Córdoba Statements. In 2008, in London, the second ministerial meeting agreed on six additional areas of cooperation, namely, environmental issues; financial services and taxation; judicial, customs and police cooperation; education; maritime communications and safety; and visa-related issues. In 2009, the third ministerial meeting, held in Gibraltar, agreed on a detailed framework for negotiations on the six areas. In 2010, the Forum met at senior official level in Gibraltar to discuss progress made by working groups in the six areas. The ministerial meeting to be held in 2010 did not take place.

32. Since 2010, no meetings have been held. In 2012, the United Kingdom expressed the desire to continue with the Forum for Dialogue and, as an alternative, offered an informal, ad hoc dialogue involving, as appropriate, all relevant parties to the different issues under discussion. While accepting that the setting-up of ad hoc groups involving all relevant parties might be an appropriate manner to deal with some specific issues under discussion, Spain expressed the desire to replace the Forum for Dialogue with a new permanent mechanism for local cooperation in the interest of social well-being and regional economic development, in which the people of the campo de Gibraltar and Gibraltar would be represented.

# VII. Future status of the Territory

## A. Position of the administering Power

33. In a statement in exercise of the right of reply before the Special Political and Decolonization Committee (Fourth Committee) of the General Assembly, on 9 October 2012, the representative of the administering Power, inter alia, recalled that the United Kingdom had sovereignty over Gibraltar and the territorial waters surrounding it, and that, as a separate Territory, Gibraltar enjoyed the individual and collective rights accorded by the Charter of the United Nations. The 2006 Constitution of Gibraltar provided for a mature relationship, rather than one based on colonialism, between Gibraltar and the United Kingdom. Unfortunately, the outdated de-listing criteria of the Special Committee on decolonization failed to recognize the mutually acceptable relationship between the United Kingdom and Gibraltar. It was his Government's view that the principle of territorial integrity had never been applicable to the decolonization of Gibraltar. Gibraltar's right of self-determination was not constrained by the Treaty of Utrecht except insofar as article X gave Spain the right of refusal should the United Kingdom renounce sovereignty. While noting that Gibraltar disagreed that such a constraint existed, the Government held that independence would be an option only with Spanish consent. Gibraltar's Constitution did not in any way diminish British sovereignty and the United Kingdom retained full international responsibility for Gibraltar. The United Kingdom reaffirmed its long-standing commitment that it would never allow the people of Gibraltar to pass under the sovereignty of another State against their wishes, and that it would not enter into sovereignty negotiations which they opposed. The British Government enjoyed strong relations with Spain and would continue to work constructively with it on all Gibraltar-related issues.

34. The speaker went on to state that, the United Kingdom and Gibraltar regretted that Spain had "withdrawn from the constructive trilateral Forum for Dialogue on Gibraltar, which had fostered improved relations and addressed practical ways of

building cooperation for the benefit of people on both sides of the frontier". The Forum functioned without prejudice to the respective positions of the United Kingdom and Spain on sovereignty, on which the United Nations did not take a view. His Government hoped that the Forum could resume at the earliest opportunity, and stood ready to explore new means of advancing dialogue that fully reflected the interests, rights and responsibilities of Gibraltar (see A/C.4/67/SR.3).

## B. Position of the territorial Government

35. On 9 October 2012, addressing the Fourth Committee, the Chief Minister of Gibraltar said, inter alia, that neither the United Kingdom nor the people of Gibraltar would allow the bilateral negotiations which Spain wanted restarted regarding the sovereignty of the Territory to go ahead. The Chief Minister emphasized that the Committee should remove Gibraltar from the list of Non-Self-Governing Territories owing to the Territory's modernized relationship with the United Kingdom and in keeping with the option it had chosen under General Assembly resolution 2625 (XXV). Gibraltar intended to remain with the British Crown in perpetuity. Over the previous 45 years, the people of Gibraltar had expressed their views in referendums and had sent their representatives to the United Nations, where Spain's attempts at colonization had been rejected.

36. Furthermore, it was the opinion of the Chief Minister that centuries-old treaties like the Treaty of Utrecht, overtaken by other and more modern conventions, and now defunct, could not be used to justify incursions into British territorial waters around Gibraltar. Those continuing "acts of aggression by a supposed ally and partner" posed the risk of human injury. In the view of the speaker, Spain had accepted the established limits of those territorial waters since the 1960s, but was currently "illegally asserting control over Gibraltarian waters".

37. The Chief Minister concluded by saying that despite such intolerable acts, Gibraltar remained committed to the trilateral Forum for Dialogue "now repudiated by Spain", and still sought positive engagement with its Government and people. In the current economic climate, Gibraltar and Spain should collaborate to promote employment and the development of the region (see A/C.4/67/SR.3).

## C. Position of the Government of Spain

38. On 9 October 2012, the Permanent Representative of Spain made a statement before the Fourth Committee stating, inter alia, that the principle of territorial integrity was essential in the case of Gibraltar, as the General Assembly had made clear in its relevant resolutions and decisions. For Spain, the solution was the restitution of both the Territory transferred from Spain under the Treaty of Utrecht and the land later "occupied illegally" by the United Kingdom. The interests of the people of Gibraltar had of course to be taken into account and, in the negotiations with Spain the United Kingdom was responsible for those interests as the administering Power.

39. The speaker went on to say that, in accordance with the Special Committee's case-by-case approach to decolonization, Spain supported the principle of self-determination where applicable, but that in his view the principle did not apply to Gibraltar. It was intended for populations of colonized territories and not for settlers

imposed by an occupying Power to the detriment of the original inhabitants, whose rights were defended by the United Nations. International law underscored the validity of the Treaty of Utrecht, which, as the United Kingdom itself had repeatedly recalled, ruled out independence without Spain's consent. Spain was certain that a political solution, based on bilateral negotiations, that took the special circumstances of Gibraltar into account, would settle the issue. The speaker reiterated his Government's recent call for bilateral talks on the decolonization of Gibraltar to resume as soon as possible, pursuant to the framework of the commitments made in the 1984 Brussels Declaration.

40. In exercise of the right of reply, the delegation of Spain recalled that the position of Spain on the waters surrounding Gibraltar has not changed. Spain does not recognize British sovereignty or jurisdiction over areas other than those included in article X of the Treaty of Utrecht. Therefore, in the delegation's view, Gibraltar does not have territorial waters.

### D. Negotiations between the United Kingdom and Spain

41. Within the framework of the Brussels Process, which is separate from the Forum for Dialogue, no bilateral negotiations were held in 2012. The Government of Spain continued to demand the renewal of bilateral sovereignty talks with the Government of the United Kingdom, while the United Kingdom made it clear that no sovereignty-related talks would be entered into without the consent of Gibraltar.

### E. Discussions between the United Kingdom and Gibraltar

42. The Governments of the United Kingdom and Gibraltar have both recognized that the current Constitution provides for a modern and mature constitutional relationship between the two sides, one which is not based on colonialism.

43. As reflected in previous working papers, both the Government of the United Kingdom and the territorial Government believe that the de-listing and decolonization criteria of the United Nations are anachronistic, and, at the same time, they recognize that under Article 73 *e* of the Charter of the United Nations, the United Kingdom is obliged to continue to submit annual reports until such time as the General Assembly votes in favour of the removal of a Territory from its list of Non-Self-Governing Territories.

## VIII. Consideration by the United Nations

### A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

44. A representative of Spain attended the Pacific regional seminar on the implementation of the Third International Decade for the Eradication of Colonialism, held in Quito from 30 May to 1 June 2012, and made a statement, as did a representative of Gibraltar (see A/67/23).

45. The Special Committee, which discussed the question of Gibraltar in a meeting held on 15 June 2012, had before it the 2012 working paper prepared by the Secretariat concerning the Territory (A/AC.109/2012/14). As reflected in the summary record of the meeting (A/AC.109/2012/SR.5), statements were made by the representative of Spain and by the Chief Minister of Gibraltar. On the proposal of the Chair, the Committee decided to resume the consideration of the question at its next session and to transmit the relevant documentation to the General Assembly in order to facilitate the consideration of the question by the Fourth Committee.

## B. Special Political and Decolonization Committee (Fourth Committee)

46. The Fourth Committee of the General Assembly considered the question of Gibraltar on 9 October 2012. As reflected in the summary record of the meeting (see A/C.4/67/SR.3), the Committee heard a statement by the Chief Minister of Gibraltar. At the same meeting, statements were made by the Permanent Representative of Spain and, in exercise of the right of reply, by the Deputy Permanent Representative of the United Kingdom, who referred to the statement made by the representative of Spain. At its meeting on 15 October 2012, the Fourth Committee adopted without a vote draft decision (A/C.4/67/L.5) on the question of Gibraltar, which was submitted by the Chair of the Decolonization Committee (see A/C.4/67/SR.7).

## C. Action by the General Assembly

47. On 18 December 2012, the General Assembly, on the recommendation of the Fourth Committee, adopted, without a vote, decision 67/530 on the question of Gibraltar. The decision reads as follows:

> The General Assembly, recalling its decision 66/522 of 9 December 2011:
>
> (a) Urges the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland, while listening to the interests and aspirations of Gibraltar, to reach, in the spirit of the Brussels Declaration of 27 November 1984,[1] a definitive solution to the question of Gibraltar, in the light of relevant resolutions of the General Assembly and applicable principles, and in the spirit of the Charter of the United Nations;
>
> (b) Takes note of the desire of the United Kingdom to continue with the trilateral Forum for Dialogue on Gibraltar;
>
> (c) Takes note of the desire of Spain to replace the Forum with a new mechanism for local cooperation in the interest of social well-being and regional economic development, in which the people of the Campo de Gibraltar and Gibraltar are represented.

[1] See A/39/732, annex.